IN THE

# Supreme Court of the United States

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OCTOBER TERM, 1941

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No. 625

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NORTH MIAMI, a Municipal Corporation organized and existing under the Laws of the State of Florida,

Petitioner,

vs.

W. J. MEREDITH, JAMES G. MARTIN and A. R. OHMART,

Respondents

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## BRIEF OPPOSING PETITION FOR WRIT OF CERTIORARI

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D. C. HULL
ERSKINE W. LANDIS
FRANCIS P. WHITEHAIR
JOHN L. GRAHAM
J. COMPTON FRENCH

Counsel for Respondents

## SUBJECT INDEX


| Topic | Page |
|---|---|
| Opinions Below | 1 |
| Additional Statement of the Case | 1 |
| Argument | 7 |
| Summary | 7 |
| Interpretation of the Judgment of Ouster | 8 |
| The Holding is in Accord with Local Decisions | 11 |
| The Holding is Based Upon Florida Decisions, Not Upon Obiter Dicta | 16 |
| Conclusion | 20 |
| Appendix | i |
| Statutes Relative to Bonds of Municipalities and Taxation for their Payment | i |
| Statute Relating to Refunding Bonds | v |
| Tax Adjustment Statute for North Miami | vii |
| Additional Tax Adjustment Statute | viii |
| Statute Changing Name of North Miami | ix |
| Statute Changing Election Date and Fiscal Year in North Miami | x |
| Statute Relating to Office of Marshal in North Miami | xi |
| Statute Authorizing Zoning in North Miami | xii |
| Statute Authorizing North Miami to Abate Nuisances | xiv |
| Statute Authorizing Occupational Taxes in North Miami | xv |
| Statute Relating to Terms of Office of North Miami Officials | xvi |

## TABLE OF AUTHORITIES CITED


| Cases | Page |
|---|---|
| Columbia County Commissioners vs. King, 13 Fla. 451 | 21 |
| Enterprise, Town of, vs. State, 29 Fla. 128, 10 So. 740 | 7, 12, 17, 19 |
| Erie Railroad Company vs. Tompkins, 304 U. S. 64, 58 Sup. Ct. 817, 82 L. Ed. 1188 | 8 |
| Heyward vs. Hall 144 Fla. 344, 198 So. 114 | 5, 6, 10, 11, 14, 15, 16, 17, 18, 19, 20 |
| Leatherman vs. Alta Cliff Co., 114 Fla. 305 153 So. 845 | 6, 14, 16, 17, 18 |
| Lee vs. Atlantic Coast Line Railroad Company, 141 Fla. 545, 194 So. 252 | 20 |
| Mahood vs. State ex rel. Davis, 101 Fla. 1254, 133 So. 90 | 4, 6, 7, 8, 9, 13, 14, 17, 18 |
| Moore vs. Illinois Central R. Co., 311 U. S. 643, 61 Sup. Ct. 754, .... L. Ed. ...., | 8, 19 |
| North Miami, Town of, et al., vs. Travis Co., 118 Fla. 879, 160 So. 360 | 6, 18 |
| Ocean Beach Heights, Inc., vs. Brown-Crummer Investment Company, et al., 302 U. S. 614, 58 Sup. Ct. 385, 82 L. Ed. 380 | 2, 3, 4, 6, 14, 16, 18 |
| Richard vs. City of Fort Lauderdale, .... Fla. ...., 1 So. 2nd. 202 | 20 |
| Sparks vs. Ewing, 120 Fla. 520, 163 So. 112 | 20 |
| United States ex rel. Horigan vs. Heyward, 98 Fed. 2nd. 433 | 4 |

## TABLE OF AUTHORITIES CITED—(Continued)


| Statutes: | Page |
|---|---|
| Chapter 11,855, Laws of Florida, Acts of 1927 | v |
| Chapter 13,103, Laws of Florida, Acts of 1927 | 19 |
| Chapter 14,237, Laws of Florida, Acts of 1929 | 19 |
| Chapter 15,347, Laws of Florida, Acts of 1931 | 19, vii |
| Chapter 15,822, Laws of Florida, Acts of 1931 | 19, viii |
| Chapter 15,823, Laws of Florida, Acts of 1931 | 19, ix |
| Chapter 16,584, Laws of Florida, Acts of 1933 | 19, x |
| Chapter 17,616, Laws of Florida, Acts of 1935 | 19, xi |
| Chapter 17,617, Laws of Florida, Acts of 1935 | 19, xii |
| Chapter 17,618, Laws of Florida, Acts of 1935 | 19, xiv |
| Chapter 18,728, Laws of Florida, Acts of 1937 | 19, xv |
| Chapter 21,426, Laws of Florida, Acts of 1941 | 19, xvi |
| Compiled General Laws of Florida, 1927, Section 3001 | i |
| Compiled General Laws of Florida, 1927, Section 3009 | i |
| Compiled General Laws of Florida, 1927, Section 3010 | ii |
| Compiled General Laws of Florida, 1927, Section 3011 | ii |
| Compiled General Laws of Florida, 1927, Section 3013 | ii |
| Compiled General Laws of Florida, 1927, Section 3032 | iii |
| Compiled General Laws of Florida, 1927, Section 3033 | iii |

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## OPINIONS BELOW

The final judgment of the District Court is unreported, but it appears at page 66 of the record. The opinion of the United States Circuit Court of Appeals is reported in 121 Federal (2nd.) 279. It appears at page 137 of the record.

## ADDITIONAL STATEMENT OF THE CASE

The petitioner, in preparing the statement of the case and in formulating the theory of the case for this Court, has omitted several important features which are necessary to a clear understanding of the case.

Such omitted matter so effectively exploded the petitioner's claim of its own non-existence, in the courts below, that the petitioner now finds it necessary to discard as mere "obiter dicta" the opinions and decisions of the State and Federal courts involving the Town of North Miami.

In the case of **Ocean Beach Heights, Inc., vs. Brown-Crummer Investment Company, et al., 302 U. S. 614, 58 Sup. Ct. 385, 82 L. Ed. 380,** in January, 1938, this Court, speaking through Mr. Justice Butler, outlined the previous history of the petitioner, Town of North Miami, as follows:

> "In 1926, **electors residing** in Dade County, Fla., **on the west side of Biscayne Bay, incorporated a town,** Miami Shores, now called North Miami. The boundaries specified by the incorporators included approximately 16 square miles, **14** of which were on the **west side** of the bay and had a population of 2,500. **Two** square miles were on the **east side** and had but **12 inhabitants.**
> . . .
>
> "Between January 1, 1927, and April 1, 1928, the town issued bonds, $238,000 of which are outstanding. In each bond the town pledged its faith and credit for payment and declared that provision had been made for the levy and collection, each year that the bond remained outstanding and unpaid, of sufficient taxes on all taxable property within its limits to pay principal and interest as they came due. . . . Proceeds of the bonds were used for the **construction of permanent improvements; the only part spent on the east side** was **$6,000** for mosquito eradication, **most** of which went for **equipment** which the **town still owns.**
>
> "In a quo warranto suit brought by the state on the relation of its Attorney General in August, 1929, and in a later suit brought by owners of east side lands to cancel tax certificates on their lands, the state Supreme Court held that the

statute relied on for creation of the municipality did not authorize inclusion of noncontiguous areas. Mahood v. State, 101 Fla. 1254, 133 So. 90; Leatherman v. Alta Cliff Co., 114 Fla. 305, 153 So. 845. And in those suits it was finally adjudged that the **east side** was not and never had been **a part of the incorporated town,** and that **the town** never acquired jurisdiction de jure or de facto **over the land east of the bay. A decree of ouster as to the east side land** was entered in December, 1931, and tax certificates on **lands on that side were canceled. . . .**

". . . And until prevented by the decree of ouster, the town exerted municipal authority on both sides of the bay within the boundaries defined by **west side electors acting to incorporate the town. . . .**"

The Court then held that:

"Mere inspection of the statute and the defined boundaries unmistakably shows that the **west side electors were without authority to incorporate the east side tract with that in which they resided.** . . . The town de facto could not derive from the consent of the east side owners jurisdiction that it de jure was without capacity to receive. . . . As the **east side lands** never became liable to be taxed **by the town** to pay its bonds, respondents were not entitled to restrain petitioners from defending against levy and collection of the taxes or to any relief in this suit."

Immediately after the decision of this Court in the **Ocean Beach Heights case,** the Town sought to resist a mandamus proceeding in the United States District Court, brought by F. M. Horigan, a holder of a judgment based on bonds of the Town, to require payment of funds on hand to apply upon the judgment.

In resisting the **Horigan suit,** the Town contended that the logical effect of the holding of this Court in the **Ocean Beach Heights case** was that the Town was non-existent, even as to the lands on the West side of the bay, as well as those on the East side, and that, therefore, the Town could not be compelled to pay the judgment which had been rendered against it on its bonds. This contention was upheld by the District Court, but reversed by the Fifth Circuit Court of Appeals, which held that the decision of this Court and the prior decisions of the Supreme Court of Florida had been misinterpreted by the Town and by the District Court, and that since the municipality on the West side of the bay had functioned steadily since 1926 and had been recognized by the Florida Legislature at almost every session as a corporation existing under the Laws of Florida, the Federal courts ought not to assume to annul it. The opinion is by Judge Sibley. The decision is reported as **United States ex rel. Horigan vs. Hayward, 98 Fed. 2nd, 433.**

In the spring of 1940, certain landowners on the West side of the bay, by a suit in the State court, sought to enjoin the taxation of their West side lands, on the ground that the Town of North Miami had no existence either de jure or de facto. The landowners contended that the general municipal incorporation statute under which the Town of North Miami had been incorporated was unconstitutional. They also contended that the proceedings attempting to incorporate two non-contiguous tracts of land, entirely separated by Biscayne Bay, under the general statute, was unauthorized and void, in toto. They further contended that the quo warranto judgment of ouster, ultimately rendered, pursuant to the mandate of the Supreme Court of Florida in the case of **Mahood vs. State ex rel. Davis, 101 Fla. 1254, 133 So. 90,** had ousted the municipal authority of the Town from the land West of Biscayne Bay, as well as from the land East of the bay. Their contentions were upheld by the lower state court.

However, the Supreme Court of the State of Florida, in an opinion by Justice Whitfield, considered each of

these contentions, and held that they were untenable, and reversed the decree of the lower court, with directions to dismiss the bill of complaint. The decision is reported as **Heyward vs. Hall, 144 Fla. 344, 198 So. 114.** The decision was rendered October 4th, 1940, and rehearing was denied October 30th, 1940.

A certified copy of the opinion was exhibited to the District Court when the instant case was heard on motion for summary judgment on November 18th, 1940 (R. 66).

In the opinion in the **Heyward vs. Hall** case, the Supreme Court of Florida said, "It clearly appears that **the Town of North Miami actually exists and its government is in operation** and **has been recognized by statutes and by judicial decrees and judgments** as having **legal existence** and **operation, at least as a de facto municipality** on the **West** side of Biscayne Bay, in Dade County, Florida." The entire court concurred in the opinion of Justice Whitfield. Justice Brown, concurring specially, stated that in his opinion the Town of North Miami became a municipal corporation de jure and has continued as such, saying:

> "In this respect, I go a bit further than Mr. Justice Whitfield, who in his opinion holds that the Town of Miami Shores, now North Miami, is at least a town de facto if indeed it is not one de jure."

The answer of the Town of North Miami in the present case shows that only $7,422.33 has been paid on the Brown-Crummer judgment of $11,790.00, entered June 19th, 1931 (now held by respondents), during the 10-year period since the judgment was entered (R. 2, 3, 13). The answer admits (R. 14) that only $2,006.44 has been paid on the H. T. East judgment of $7,214.46, entered July 30th, 1936, now held by respondents (R. 4). The answer admits (R. 14) that nothing whatever has been paid on the $129,010.45 Brown-Crummer judgment, entered July 1st, 1937, now held by respondents (R. 5, 6).

Although the Town has insisted to its creditors that it does not exist, for the purpose of paying its debts, since

the decision of this Court in the **Ocean Beach Heights case,** nevertheless the record in this cause shows that the Town has continued to function since that decision was announced, in 1938. It has operated its utilities, it has exercised police power, as a source of revenue, it has made up tax assessment rolls and levied and collected taxes, it has spent an average of $2,000.00 a month for operations and administrative expenses (R. 15 to 17).

The State Legislature has recognized the Town, as an existing corporate entity, at every legislative session since the Town was incorporated, in 1926, with the single exception of the 1939 session. In addition to the Acts of 1927 and 1929, set out in the appendix to the petition, the Legislature has passed a number of other legislative acts relating to the Town, which are set out in the appendix hereto. In fact, the 1941 Legislature, while this case was pending before the Circuit Court of Appeals, enacted a statute granting additional powers to the Town.

This Court, in the **Ocean Beach Heights case,** recognized the Town as an existing corporate entity. The Supreme Court of Florida, in the **Mahood case,** in the case of **Leatherman vs. Alta Cliff Co., 114 Fla. 305, 153 So. 845,** and in the case of **Town of North Miami, et al., vs. Travis Co., 118 Fla. 879, 160 So. 360,** has recognized and treated the Town as an existing corporate entity. In the case of **Heyward vs. Hall,** supra, the Supreme Court of Florida specifically held the Town to be an existing corporate entity.

The District Court, therefore, in the present case, refused to treat the Town as non-existent, and ordered it to levy taxes on the West-side property to pay the respondents' judgments previously entered against it. The Circuit Court of Appeals affirmed this action of the District Court.

## ARGUMENT

### Summary

I. The Circuit Court of Appeals' interpretation and application of the judgment of ouster entered by the Circuit Court of Dade County, Florida (**State ex rel. Landis vs. Mahood**), pursuant to the mandate of the Supreme Court of Florida in **Mahood vs. State ex rel. Davis, et al.**, is entirely correct. An analysis of the information and of the opinions of the Supreme Court of Florida in that case clearly demonstrates that the judgment did no more than oust the Town and its officials from exercising jurisdiction over the lands East of Biscayne Bay. The Supreme Court of Florida has expressly held that the judgment shows on its face that it did no more.

II. The holding of the Circuit Court of Appeals that there is a municipal corporation, at least defacto, if not de jure, West of Biscayne Bay, which may contract debts, be sued for them and be compelled to levy taxes to pay them, according to the laws of Florida governing municipal corporations, is entirely in accord with the applicable local decisions concerning this very petitioner, Town of North Miami. The Supreme Court of Florida has considered and rejected petitioner's present contention that the incorporation of the Town of North Miami in 1926 was void as to the lands on the West side of Biscayne Bay under the doctrine of the case of **Town of Enterprise vs. State, 29 Fla. 128, 10 So. 740.**

III. The holding of the Circuit Court of Appeals that there is a municipal corporation, at least de facto, on the West side of Biscayne Bay, which may and should be compelled to levy taxes to pay judgments based upon bonds issued by it, is based upon legal principles which have been expressly adjudicated by the Supreme Court of Florida, in litigation directly involving the Town of North Miami, and directed to this very issue. The holdings of the Supreme Court of Florida that the petitioner is a municipal corporation lying West of Biscayne Bay are

actual adjudications, and not, as petitioner argues, "mere obiter dicta." No matter how absurd petitioner may conceive these decisions of the Supreme Court of Florida to be, such decisions are binding on the Federal courts, under the principles announced in **Erie Railroad Company vs. Tompkins, 304 U. S. 64, 58 Sup. Ct. 817, 82 L. Ed. 1188,** and it would have been error if the Circuit Court of Appeals had departed from the Florida Supreme Court's interpretation of the municipal self-incorporation statute as applied to this very Town of North Miami. See **Moore vs. Illinois Central R. Co., 311 U. S. 643, 61 Sup. Ct. 754, .... L. Ed. ...**

**The Circuit Court of Appeals' Interpretation and Application of the Judgment of Ouster Entered Pursuant to the Mandate of the Supreme Court of Florida is Correct.**

The judgment of ouster appears at pages 28 to 31 of the record. The Circuit Court of Appeals, by holding that the judgment of ouster entered pursuant to the mandate of the Florida Supreme Court in the **Mahood case** "did not purport to nullify the municipality or oust its officers wholly, but only as to the part of the town east of the Bay" (R. 139), placed upon the judgment the only intelligent construction which could possibly be placed upon the language used in the judgment.

The record in the **Mahood case** does not support the construction which petitioner now seeks to place upon the language used in the judgment. It is true that the information filed by the State of Florida, through its Attorney General, in the Circuit Court of Dade County, Florida, in 1929, sought to oust the Town government as a whole, and alleged that the Town had never been organized according to law and was without legal existence (R.20). However, it should be noted that the information also alleged that there were not more than 10 registered voters living on the East side of the bay, and that at the time of the attempted incorporation the registered voters participating in the election and incorporation were all residents of the community on the West side of the bay (R. 25).

A judgment of ouster was entered on the pleadings, but this judgment was reversed by the Supreme Court of Florida in a decision reported as **Mahood vs. State ex rel. Davis, 101 Fla. 1254, 133 So. 90,** on the ground that the Town was entitled to a jury trial on the issue of whether or not the community existed, in whole or in part on the East side of the bay, as well as on the West side. Both the majority opinion of Mr. Justice Buford and the opinion of Mr. Justice Brown pointed out that there was no question but that the community or village existed on the West side of the bay.

In the meantime, Attorney General Davis was succeeded in office by Attorney General Landis, in whose name the cause was continued.

The trial was then held, and Judge A. V. Long, then a State Court Judge, directed a verdict against the Town (R. 28), and under date of December 18th, 1931, entered a judgment of ouster wherein the Town and its officials **were excluded and prohibited from exercising the offices, franchises and privileges of a municipality over or upon particularly described lands lying East of Biscayne Bay** (R. 28, 29).

The information alleged (R. 25) that at the time of the incorporation the registered voters participating in the election and incorporation were all residents West of the bay. The petitioner states, on page 12 of its brief, that the Town, by its answer, denied these allegations. The record shows that the jury found for the relator and co-relators. Under the law of the case, as established in the opinion of the Florida Supreme Court, pursuant to which the trial was being held, the jury must, therefore, have found that all of the incorporators were West-side residents.

In order to interpret the ouster judgment as absolutely abolishing the Town, and as holding its incorporation to be void in toto, it is necessary for the petitioner to quote only a portion of the judgment and ignore the remainder. The District Court and the Circuit Court of Appeals very

property refused to stultify themselves by reading only the first half of one of the sentences in the judgment, but considered the entire sentence in determining its meaning.

We do not belabor the point further, because the Supreme Court of Florida, in the case of **Heyward vs. Hall, 144 Fla. 344, 198 So. 114,** decided October 4th, 1940, has authoritatively interpreted this very ouster judgment.

The Court, in an opinion prepared by Justice Whitfield, at **page 118 of 198 So.,** said:

> **"The municipal authority of the Town was not ousted from the land west of Bay Biscayne in the Mahood case as claimed by appellees.** As shown by the record on file in this Court in E. B. Leatherman, et al., v. Alta Cliff Co., Ocean Beach Heights v. Brown-Crummer Inv. Co., Inc., supra, the quo warranto judgment referred to by counsel for all parties in this case as having been ultimately rendered December 18, 1931, by the Circuit Court pursuant to the mandate of this Court in the case of Mahood v. State, supra, is in part as follows:
>
> "'Ordered and adjudged by the Court, that the respondents Louis Nathan as Mayor, . . . of the Town of North Miami (formerly known as Town Miami Shores), and the Town of North Miami (formerly known as Town of Miami Shores) be and they each are hereby ousted, excluded and prohibited from exercising the offices, franchises and privileges of a municipality or municipal corporation, and of the Mayor . . . thereof, under the purported license, incorporation and/or charter of the Town of North Miami (formerly known as Town of Miami Shores), over or upon the following described lands, or any part thereof, to-wit:' (description of lands by metes and bounds).
>
> "'It is further ordered and adjudged by the court that the lands above described which consti-

tute all that portion of the purported Town of Miami Shores **East of Bay Biscayne,** and between said Bay Biscayne and the Atlantic Ocean are not, and never were legally incorporated in the Town of Miami Shores, now known as Town of North Miami and that **said lands** were never a part of the said purported Town and that their attempted inclusion therein was illegal, null and void and without warrant or authority of law.'

**"Such judgment of ouster clearly was confined and limited to the lands on the east side of Bay Biscayne** which were attempted to be included in the Town of Miami Shores, sought to be established in 1926 under Sec. 2935 (1825), et seq., C. G. L., by inhabitants of a **hamlet then existing on the west side of Bay Biscayne.** The judgment is now res adjudicata as to the lands on the **east** side of the Bay."

The opinion further says (text 117):

"Such judicial ouster of municipal jurisdiction of the Town of Miami Shores and of North Miami by name from the east side of the Bay was **judicial recognition of the continued existence of the Town as a municipality, at least de facto, on the west side of Bay Biscayne."**

Since the Supreme Court of Florida had held that the Town of North Miami still exists, on the West side of the bay, it follows that the lower Federal courts committed no error in not holding it to be non-existent, and in requiring the Town to levy and collect taxes from the property on the West side to pay judgments entered upon bonds previously issued by it.

**The holding of the Circuit Court of Appeals is in accord with the applicable local decisions.**

In the case of **Heyward vs. Hall, 144 Fla. 344, 198 So. 114,** text 116, the Supreme Court of Florida, speaking

through Justice Whitfield, considered petitioner's contention that the principle of the **Enterprise case** invalidates the municipal corporation, on the West side of the bay, as well as on the East side of the bay, and decisively disposed of this contention, saying:

> "The main contention in support of the decree of the Circuit Court is that the attempt of the inhabitants of a hamlet on the west side of Bay Biscayne in 1926 to establish a municipal government for themselves . . . was wholly void and ineffectual to give the Town a legal existence under the statute because described non-contiguous lands on the east side of the Bay as well as described lands on the west side of the Bay were included in the incorporation proceedings taken by the inhabitants under the general statute and that such inclusion of non-contiguous tracts of land, being unauthorized, rendered the incorporation proceedings null and void under the decision in Town of Enterprise v. State, 29 Fla. 128, 10 So. 740, and that consequently there can be no de jure or de facto Town of North Miami within the area described in the incorporation proceedings even on the west side of Bay Biscayne, where there was a hamlet at the time of the incorporation and now is a Town asserting municipal authority under the name of Town of North Miami.
>
> "The conclusion asserted is not justified for the reason that in the cited Town of Enterprise case the second attempt of the inhabitants of a hamlet or village to establish for themselves a municipal government under the general laws of the state **was abandoned**; . . . It is clear from the whole record in the Town of Enterprise case that the court had no purpose to decide and did not intend to adjudicate that the entire second proceedings were wholly void and could be of no legal effi-

> cacy whatever . . . There was of course no occasion in that case to consider the applicable law if there had been the exercise of de facto municipal authority over all or part of the described land, which presumably contained a hamlet or village in one of the non-contiguous tracts of land."

Mr. Justice Whitfield goes on to point out that, in North Miami, municipal authority has been exercised over the lands on the West side of the bay where there was and is a hamlet or village, which could have been incorporated by the inhabitants, under the general statutes, and that the municipality has been repeatedly recognized by the statutes of the State since 1927, "which in legal effect makes the village or town on the West side of the bay at least a de facto municipality."

The opinion further states that the Town of North Miami, on the West side of the bay, is "at least a de facto if not a de jure municipality with prescribed statutory jurisdiction and powers within the limits of incorporation. . . . For judicial recognition of the town of North Miami, see the Town of North Miami vs. Travis Co., 118 Fla. 879, 160 So. 360; Leatherman v. Alta Cliff Co., supra; Mahood v. State, supra; Ocean Beach Heights v. Brown-Crummer Investment Co., supra; (referring to the decision of the Supreme Court of the United States.) United States v. Heyward, supra."

On page 14 of its brief, petitioner erroneously states that in the **Mahood case,** the Supreme Court of Florida remanded the case for trial on the issue of whether the Town actually included two detached tracts of land. The Supreme Court of Florida specifically recognized the fact, which everybody knew, that the tracts of land were separated by Biscayne Bay, and the issue which the Supreme Court of Florida directed to be tried was whether or not the community which had been incorporated as a village was located on both sides of the bay or merely on the West side of the bay.

In the case of **Leatherman, et al., vs. Alta Cliff Company, et al., 114 Fla. 305, 153 So. 845,** the Supreme Court of Florida held that tax certificates issued by the Town of North Miami against the lands on the East side of the Bay were null and void and should be cancelled because of the effect of the ouster judgment entered pursuant to the opinion and mandate of the Supreme Court of Florida in the **Mahood case.** The Court specifically stated that:

> "When the village or hamlet was incorporated by the citizens, it became a de facto corporation only to the extent authorized by the legislative acts in this regard."

that is to say, West of the Bay.

In **Heyward vs. Hall,** supra, owners of lands West of the bay asked for injunctive relief identical with that which had been granted to the East-side landowners in the **Leatherman case.** This relief was denied, because the Supreme Court of Florida held that the Town **does exist West of the bay, at least** as a de facto corporation, in contradistinction to its decision in the **Leatherman** case that the Town did not exist **East** of the bay, **even** as a de facto corporation. The opinion of the Supreme Court, in the **Heyward vs. Hall** case, cannot be dismissed as mere obiter dicta, but must be regarded as deciding that the Town does exist, West of the bay.

The petitioner's attempt to construe the opinion of this Court in the **Ocean Beach Heights case** as an adjudication that the Town did not exist, on either side of the bay, requires the petitioner to seize upon one sentence in the opinion, and to ignore the rest of the opinion, which clearly demonstrates that this Court did not do more in that case than adjudge that the East side property could not be taxed by the Town.

The adjudication of this Court in the **Ocean Beach Heights case** is obviously an adjudication of the status of the East side lands only, since the West side lands were not in any way involved in the case.

Indeed, it is apparent that this Court denied the petition for rehearing filed by the then counsel for the Brown-Crummer Investment Company, which attempted to argue the status of the West side lands, because such argument was directed to matters which were not involved in the case and which were not properly presented for decision.

Petitioner attempts to distinguish the case of **Heyward vs. Hall,** supra, by stating that the judgment of ouster was not pleaded in that case. But the opinion of the Supreme Court of Florida shows that it was argued, considered and determined in that Court. If the Supreme Court of Florida had considered that the ouster judgment in the previous quo warranto proceeding had, in fact, ousted the Town, as a whole, the Court could not possibly have held that the proper remedy for the West-side landowners, if any, was the bringing of a second quo warranto proceeding.

Petitioner, on page 18 of its brief, argues that the original incorporation was participated in by voters of both the East and West sides of Biscayne Bay, and that, therefore, the decision of the Circuit Court of Appeals is erroneous. On page 4 of its brief, petitioner, in a footnote, asks this Court to take judicial notice of the record in the case of **Heyward vs. Hall, supra,** wherein the bill of complaint alleged that the inhabitants of both the East and West sides of Biscayne Bay participated in the incorporation. If this Court should take judicial notice of the record in **Heyward vs. Hall,** it will further find that the answer of the Town in that case admitted this allegation of the bill of complaint. However, the Supreme Court of Florida, notwithstanding this allegation and admission, held that the Town still exists on the West side of the bay. Therefore, the holding of the Circuit Court of Appeals is in complete harmony with the decision of the Supreme Court of Florida, even if the record in this case had shown that the East side inhabitants participated in the incorporation. The record in this case does not show this to be a fact, for the only reference in this record to

the participation of the East-side inhabitants appears at page 25 of the record, where the information in quo warranto, attached as an exhibit to petitioner's answer, alleges that the voters participating in the incorporation were all residents of the West side. On page 4 of the petition, a footnote relies upon the notice of the organizatoin meeting, contained in the **Ocean Beach Heights case** record, as establishing participation by East-side voters. This notice, which was posted before the meeting was held, could not possibly prove who actually appeared at the meeting, unless it be accepted as an infallible prophecy. The record of the incorporation proceedings, which appears in the Ocean Beach Heights transcript, does show that one Paul Prigg was elected alderman, but the Ocean Beach Heights record, as well as this record, is silent as to the place of residence of Paul Prigg, who is nowhere mentioned in the record in the instant case.

Regardless, however, of the factual basis for petitioner's often-repeated statement that inhabitants of both sides of the bay participated in the incorporation, it is apparent that the Supreme Court of Florida, in the **Heyward vs. Hall** case, with the statement before it, has definitely held that the Town still exists on the West side of the bay, and that the holding of the Circuit Court of Appeals in the present case is in complete harmony with the law as adjudicated by the Supreme Court of Florida, and that what petitioner actually seeks in this proceeding is a reversal of the case of **Heyward vs. Hall** by the Federal courts.

**The holding of the Circuit Court of Appeals is based upon legal principles enunciated by the Supreme Court of Florida and not upon obiter dicta.**

We have already pointed out that the decision of the Supreme Court of Florida in **Heyward vs. Hall,** supra, cannot be dismissed as obiter dicta, because while in the **Leatherman case** the Supreme Court of Florida had held that the East-side landowners were entitled to enjoin the issuance of tax deeds based upon tax sale certificates issued for taxes levied by the Town upon East-side lands, in

**Heyward vs. Hall,** the Supreme Court of Florida held that the west-side land-owners were not entitled to obtain such relief as to tax sale certificates issued for taxes levied by the Town against west-side lands. The basis for this decision was that the municipality still exists, at least as a de facto municipality, insofar as the west-side lands are concerned, and the basis for the **Leatherman** decision was that the Town did not exist, even as a de facto municipality, insofar as the east-side lands were concerned. Therefore, the Supreme Court of Florida's discussion in the case of **Heyward vs. Hall** of the de facto existence of the Town, on the West side, was not obiter dicta, but went directly to the heart of the controversy, and the reasons there given for the decision of the Court were an integral portion of the Court's opinion, just as the discussion of the **Enterprise** case was an integral portion of the Court's decision in the **Mahood** and **Leatherman cases** dealing with the East-side lands. Furthermore, the discussion in the **Heyward case** constituted no departure from the holding in the **Mahood** and **Leatherman cases,** but was entirely consistent with the opinions of the Court in the **Mahood** and **Leatherman cases.**

In its opinion in the **Mahood case,** which reversed the first ouster judgment, the Court treated the Town as admittedly existing on the West side of the bay, but held that the territory East of the bay could not be included within the corporate limits, by proceedings under the self-incorporation statute, taken by the inhabitants of the community located and existing entirely West of the bay.

In the **Leatherman case,** the Supreme Court of Florida stated that the municipality had never acquired any de facto or de jure jurisdiction over the lands East of the bay, because the incorporation statute did not contemplate that the inhabitants West of the bay might take unto themselves jurisdiction of the territory East of the bay, which was in no way a part or parcel of the hamlet or village sought to be incorporated, and the Court specifically pointed out that the village became a de facto corporation, to the extent authorized by the legislative acts in

this regard, that is to say, West of the bay, where the community was situated.

In the case of **Town of North Miami, et al., vs. Travis Co., 118 Fla. 879, 160 So. 360,** decided in 1935, subsequent to the decisions in the **Mahood** and **Leatherman cases,** and prior to the decision of this Court in the **Ocean Heights case** and the decision of the Supreme Court of Florida in the case of **Heyward vs. Hall,** the Travis Company brought a bill in equity to enjoin the Town from expending for operation purposes moneys which were being collected from taxes levied for debt service purposes. Certain paragraphs of the bill alleged that the Town was under a duty to appropriate sums for the payment of its bonds and to levy and collect taxes to raise such funds and to expend such funds so collected solely for the payment of its bonds. The Town moved to strike these paragraphs. The Circuit Court of Dade County, Florida, denied the Town's motion to strike. The Town then appealed to the Supreme Court of Florida, which affirmed the order, thereby squarely holding that the Town was under a duty to levy taxes for the payment of its bonds and to expend the proceeds thereof on such bond payments, and not for operation purposes, as the Town was in the habit of doing.

The Court, speaking through Mr. Justice Buford, at **page 361 of 160 So.,** said:

> "We deem it unnecessary to devote any space to discussing the question as to whether or not a duty rested upon the municipality to assess, levy and collect taxes to pay its bonded indebtedness which had been lawfully created and incurred. It can hardly be questioned that this duty exists and should be performed."

Petitioner argues, on page 22 of its brief, that the decision in the **Travis case** is not sufficient judicial recognition to establish a de facto municipality. It is obvious that the decision in the **Travis case** not only judicially recognized the existence of the municipality, but specifically held that this municipality was under a duty to levy

and collect taxes to pay its bonds, and that by no stretch of the imagination can this decision be construed as obiter dicta. On the contrary, it adjudicated a legal principle with regard to this very town, directly applicable to the issue now involved in the instant case, which issue is whether the District Court and the Circuit Court of Appeals committed error in holding that this Town of North Miami should levy and collect taxes to pay the judgments held by the respondents, based upon bonds which the Town had issued. Obviously, the lower Federal courts would have committed error if they had not followed the decisions of the Supreme Court of Florida holding that this Town of North Miami does exist, as a municipal corporation, on the West side of Biscayne Bay, and that it is under a duty to levy and collect taxes for the payment of its bonded indebtedness.

The case of **Heyward vs. Hall** is the latest in a series of cases in which the Florida Supreme Court has interpreted the municipal self-incorporation statute. The **Enterprise** case was an earlier case interpreting the statute and applying it to a particular set of circumstances. The case of **Heyward vs. Hall** is the most recent case in which the Florida Court has interpreted the statute. It deals specifically with the Town of North Miami. In **Moore vs. Illinois Central R. Co., 311 U. S. 643, 61 Sup. Ct. 754, -- L. Ed.** ...., it was held that the Circuit Courts of Appeals are bound by the interpretations placed upon State statutes by the state court of last resort.

The petitioner, in attacking the decision of the Florida Supreme Court in **Heyward vs. Hall,** dealing with the legislative recognition of the Town, discusses only Chapter 13,103, Acts of 1927, and Chapter 14,237, Acts of 1929, ignoring Chapter 15,347, Acts of 1931, Chapter 15,822, Acts of 1931, Chapter 15,823, Acts of 1931, Chapter 16,584, Acts of 1933, Chapter 17,616, Acts of 1935, Chapter 17,617, Acts of 1935, Chapter 17,618, Acts of 1935; Chapter 18,728, Acts of 1937, and Chapter 21,426, Acts of 1941, all enacted by the Florida Legislature, and set out in the appendix to this brief. These statutes, among other things, au-

thorize the Town and its officials to compromise and adjust taxes, and to adopt zoning laws, and to levy and collect occupational license taxes, change the name of the Town, change the fiscal year and the terms of the elected officers, and five of them, enacted in 1935, 1937, and 1941, specifically refer to North Miami as "a town . . . incorporated under the general laws" of Florida.

We do not discuss these statutes in further detail, because the Supreme Court of Florida, in the case of **Heyward vs. Hall,** has specifically held that they constiaute legislative recognition of the continued existence of the Town.

Petitioner has stated, as its fifth specification of error, in the petition, the proposition that the general improvement bond issue of January 1, 1927, was invalid because the amount of the issue is in excess of 10 per cent of the assessed value which was placed upon the real and personal property on the West side of the bay at the time the bonds were issued. Petitioner has not argued this specification of error in its brief, and has, therefore, evidently abandoned it. However, the 10 per cent limitation was one established by statute, and, therefore, under the repeated holdings of the Supreme Court of Florida, the statutory validation decree validating these bonds (R. 58) conclusively established the validity of the issue. The holding of the Circuit Court of Appeals was, therefore, in complete accord with the decisions of the Supreme Court of Florida on this question. See **Sparks vs. Ewing, 120 Fla. 520, 163 So. 112; Lee vs. Atlantic Coast Line Railroad Company, 141 Fla. 545, 194 So. 252; Richard vs. City of Fort Lauderdale, .... Fla. ...., 1 So. 2nd. 202,** Opinion filed March 11th, 1941.

## Conclusion

Ever since the West-side landowners learned that the East-side landowners could not be compelled to pay the bonds which the Town had issued and sold and the proceeds of which had been used to install permanent improvements on the West side of the Bay, the Town and

its West-side inhabitants have sought to escape all responsibility for payment of the bonded debt which was incurred for the benefit of the West-side lands.

The Town has advanced the theory of its own non-existence only as against its creditors, however, for it continues to function as a going concern, operating public utilities, exercising police powers, electing officers, levying and collecting taxes for operating purposes, and exepending for purposes satisfactory to itself more than $2,000.00 a month, while maintaining that it does not exist, insofar as its creditors are concerned.

In order to maintain that contention in this Court, the petitioner is obliged to characterize as mere obiter dicta every decision of the State and Federal courts which conclusively demonstrate its position to be untenable.

Respondents are admitted to be the holders of three judgments, entered in the District Court, at different times, against the petitioner, Town of North Miami. It is conceded that the judgments are based upon bonds and interest coupons issued by the Town, and that the statutes under which the bonds and coupons were issued provided for the levy and collection of taxes for the payment of such bonds and coupons, and that the judgments have not been paid.

Respondents filed a complaint in the District Court praying that the Town be required to levy a special tax for the payment of these judgments. The Town filed an answer, containing two contentions. The first of these contentions was that the ouster judgment attached to the answer and made a part thereof had abolished the Town. A mere inspection of the ouster judgment shows that the ouster relates only to the lands East of Biscayne Bay and not to the lands which the respondents sought to have taxed. The second contention advanced by the Town was that the Town is too poor to pay its debts. But the Supreme Court of Florida has held, ever since the case of **Columbia County Commissioners vs. King, 13 Fla. 451,** decided 70 years ago, that poverty is no defense in a proceeding of this kind.

The respondents moved for a summary judgment requiring the levy of a tax upon the territory of the Town lying West of Biscayne Bay.

Thereupon, and before the motion for summary judgment was heard, the Town moved for leave to file an amendment to its answer, advancing as a further contention the position that certain of the bonds upon which respondents' judgments were based were invalid because issued in excess of a statutory debt limitation.

The District Judge gave due consideration to the allegations of the proposed amendment and found that the matters alleged presented no defense to the relief sought, because of the validation decree and because of the entry of the plaintiffs' several judgments. Leave to file the proposed amendment was accordingly denied.

It is submitted that, inasmuch as the pleadings, affidavits and admissions on file showed that there was no genuine issue as to any material fact, and that the plaintiffs were entitled to judgment as a matter of law, on principles adjudicated repeatedly, both by the Supreme Court of Florida and by the Federal courts, the District Court had no discretion to withhold the entry of judgment, and that the action of the Circuit Court of Appeals in affirming the judgment was without error.

Respectfully submitted,

D. C. HULL
ERSKINE W. LANDIS
FRANCIS P. WHITEHAIR
JOHN L. GRAHAM
J. COMPTON FRENCH
Counsel for Respondents.